

FAQ: Non-binary Sex Identifier on Driver Licenses and Identification Cards

What is the Colorado Department of Revenue's proposed policy regarding a non-binary sex identifier on driver licenses and identification cards?

The Colorado Department of Revenue (CDOR) is exercising its statutory authority to adopt emergency rules to define the term "sex" for purposes of a driver license or identification card, and for changing the sex identifier on a driver license or identification card. These rules are necessary to ensure Coloradans can obtain driver licenses and identification cards that accurately identify their sex, as determined by the individual and their licensed treating medical or behavioral healthcare provider.

What does this mean for Coloradans when selecting the sex that appears on their driver license or identification card?

These rules allow Coloradans to designate M (male), F (female) or X (persons who do not identify as male or female) as their sex. This designation is defined by the individual and their licensed treating medical or behavioral healthcare provider.

Why is the CDOR taking this action now with an emergency rule?

The Executive Director of CDOR has found that adoption of these rules is necessary for the preservation of public health, safety and welfare. These rules are consistent with recent federal and state court actions.

On September 19, 2018, Judge R. Brooke Jackson of the U.S. District Court for the District of Colorado, ordered the U.S. Department of State to issue a passport with an alternate sex designation to a Colorado resident. *See Zzyym v. Pompeo*.

Additionally, the Colorado Department of Public Health and Environment (CDPHE) recently settled a court case where the plaintiff, a minor, through his parent, sought to have the state's birth certificate policy declared unconstitutional because it does not allow a person to update the sex marker on their birth certificate unless their sex has been surgically changed. As part of the settlement in *B.D. vs CDPHE*, CDPHE is making substantive changes to the existing Vital Statistics Regulation to allow female, male and a third sex designation on a birth certificate.

Offering a third non-binary sex identifier on Colorado driver licenses and identification cards is consistent with these cases, and the policy provides access to sex identifiers that reflect a person's true lived experience. This policy will better serve all Coloradans.

When does the new policy go into effect?

Under the authority granted under state law, the CDOR is issuing an emergency rule that will go into effect November 30, 2018. The CDOR will comply with permanent rulemaking procedures, and afford interested persons an opportunity to submit written data, views or arguments, or present the same orally, for the CDOR to consider prior to adopting permanent rules - all in accordance with rule-making procedures under state law.

What documentation does an individual need to present to the Division of Motor Vehicles (DMV) in order to select an “X” sex identifier on their driver license or identification card?

Individuals must present identification documents required by the REAL ID Act when applying for or renewing a Colorado driver license or identification card. Under the proposed rule, the individual obtaining a driver license or identification card, or changing the sex on their driver license or identification card would need to provide the DR2083 Change of Sex Designation form with a signature from their licensed treating medical or behavioral healthcare provider confirming the individual has received appropriate clinical treatment for their correct sex. This requirement does not require an individual to undergo any specific surgery, treatment, clinical care or behavioral healthcare.

Will individuals be able to change their sex designation through the DMV’s online services?

No. Individuals must present the DR2083 Change of Sex Designation form with a signature from their licensed treating medical or behavioral healthcare provider confirming the individual has received appropriate clinical treatment for their correct sex in person at a driver license office.

Does the Colorado General Assembly have to pass legislation to allow this policy to go into effect?

No. Because sex is not defined in Colorado statute, CDOR is moving forward with rulemaking to allow a non-binary sex identifier on state driver licenses and identification cards.

Who did CDOR consult with in developing this policy?

Governor Hickenlooper established the Joint ID Task Force in early 2013 to address barriers to obtaining driver licenses and identification cards. The Task Force includes representatives from the Colorado Lawyers Committee, Colorado Legal Services, the ACLU of Colorado, One Colorado, The GLBT Community Center of Colorado, CDOR, and the Department of Corrections. The group meets monthly to discuss ongoing systemic problems. The DMV has been working with the Joint ID Task Force and law enforcement agencies on the possibility of adding a non-binary sex identifier on Colorado driver licenses and identification cards.

Do other states allow a non-binary sex identifier on their driver licenses and identification cards?

Yes. California, Oregon, Minnesota, Maine and Washington, D.C. allow a non-binary sex identifier on their driver licenses and identification cards.

Will new residents to the state be able to convert their out-of-state driver license with a non-binary sex identifier to a Colorado driver license automatically, or will they have to provide documentation to have an “X” sex identifier on a Colorado driver license?

If the other state has an “X” sex identifier, the individual is able to directly convert their license to a Colorado license. If the other state has an identifier that Colorado does not offer, the individual will need to present the DR2083 Change of Sex Designation form with a signature from their licensed treating medical or behavioral healthcare provider to change their sex designation.

Will a Colorado driver license or identification card with a non-binary sex identifier be valid identification for obtaining a U.S. passport or other federal identification?

Yes. As long as the individual meets all requirements to obtain a REAL ID-compliant driver license or identification card, a card with a non-binary sex identifier will be REAL ID-compliant.

Will Coloradans have to pay a fee to change their sex identifier on their state driver license or ID?

Individuals will have to pay the standard fee to obtain a new card. There is no additional fee to change the sex identifier. DMV fees are listed at <https://www.colorado.gov/pacific/dmv/dmv-fees>.

How much will it cost the state to implement this new policy?

There are no development or programming costs associated with this rule.

Will this change affect law enforcement's ability to properly identify suspects, or hinder the investigative process in any way?

The DMV has consulted with law enforcement agencies on this change. They did not indicate a concern this rule will impact the investigative process.